

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF
SANDRA LYNN DUDA

:
:

CIVIL ACTION 06-5618
BANK. NO. 05-27807

MEMORANDUM

Padova, J.

May 15, 2007

This is an appeal from a November 14, 2006 Order of the Bankruptcy Court for the Eastern District of Pennsylvania, dismissing the objections of the debtor, Sandra Lynn Duda, to a proof of claim filed by Appellee HCR ManorCare (“ManorCare”). For the reasons that follow, we affirm the Order of the Bankruptcy Court.

I. BACKGROUND

Duda’s father was a resident at a ManorCare facility in Laureldale, Pennsylvania from November 2001 until February 2003. (11/14/06 Hr’g Tr. at 17-18, 38.) When her father was admitted to the facility, Duda signed an Admission Agreement as her father’s “Legal Representative.” (See Admission Agrmt. at 9.) A section of the Agreement entitled “Rights and Responsibility of the Legal Representative” contains a provision regarding payments to ManorCare, which states as follows:

2.02 Agreement to Make Payments on Behalf of Residents. The Legal Representative agrees to pay from the Resident’s income or resources all fees and charges for which the Resident is liable under this Agreement. The Legal Representative shall not incur personal liability on behalf of the Resident except for a breach of the duty to provide payment from the Resident’s income or resources for the fees and charges provided for in this Agreement.

(Admission Agrmt. ¶ 2.02.)

On March 9, 2004, ManorCare sued Duda's father for unpaid charges, and it subsequently filed a separate action against Duda. According to ManorCare, Duda was personally liable under the Agreement for her father's charges, because she had failed to use her father's available income and resources, including equity that her father held in his home, to pay ManorCare's fees and charges. (11/14/06 N.T. at 14-15.) Before ManorCare's claim against Duda could be adjudicated, Duda filed for relief under Chapter 7 of the United States Bankruptcy Code. (R. 1.) On the schedules attached to her bankruptcy petition, Duda listed ManorCare as an unsecured creditor with a claim of \$18,778.00. (R. 7.)

Although the deadline for creditors to file Proofs of Claim in Duda's bankruptcy case was August 4, 2006, ManorCare did not file its Proof of Claim until August 11, 2006. (R. 6.) On October 12, 2006, Duda filed an Objection to that Proof of Claim, asserting that she was not in privity of contract with ManorCare and therefore, had no liability to the facility. (R. 5.) At a hearing before the Bankruptcy Court on November 14, 2006, Duda raised as an additional Objection that ManorCare's Proof of Claim was untimely. (11/14/06 Hr'g Tr. at 7.) In a ruling from the bench, the Bankruptcy Court overruled both Objections and allowed ManorCare's Proof of Claim. (Id. at 13, 79.) Specifically, the Bankruptcy Court found that (1) the Proof of Claim was not untimely because ManorCare had not received proper notice of the filing deadlines (id. at 12-13), and (2) Duda was in privity of contract with ManorCare because she had signed the Admission Agreement as her father's Legal Representative. (Id. at 79-80). The Bankruptcy Court further concluded that ManorCare had met its burden of proving that Duda had breached the Admission Agreement by failing to use real estate owned by her father to pay ManorCare, either by refinancing or liquidating the property, and was therefore personally liable to ManorCare under the terms of the Agreement.

(Id. at 76-79.) These rulings were later memorialized in a written Order dated November 30, 2006.

(R. 4.)

II. STANDARD OF REVIEW

“In bankruptcy cases, the district court sits as an appellate court,” In re Cohn, 54 F.3d 1108, 1113 (3d Cir. 1995), and “may affirm, modify, or reverse [the] bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings.” Fed. R. Bankr. P. 8013. The district court applies “a clearly erroneous standard to findings of fact ... [and] a de novo standard of review to questions of law.” Berkery v. Comm’r, Internal Revenue Serv., 192 B.R. 835, 837 (E.D.Pa.1996), *aff’d*, 111 F.3d 125 (1997). De novo review requires the district court to make its own legal conclusions, “without deferential regard to those made by the bankruptcy court.” Fleet Consumer Discount Co. v. Graves, 156 B.R. 949, 954 (E.D. Pa. 1993), *aff’d*, 33 F.3d 242 (3d Cir. 1994). The present appeal raises only questions of law and thus, our review is de novo.

III. DISCUSSION

A. Timeliness

Duda’s first claim on appeal is that the Bankruptcy Court erred in overruling her objection to ManorCare’s Proof of Claim based on the Proof of Claim’s untimeliness. This claim is meritless.

“In a chapter 7 liquidation . . . a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors.” Fed. R. Bankr. P. 3002(c). The fact that a Proof of Claim is untimely, however, does not preclude it from being considered. Indeed, section 502(b) of the Bankruptcy Code makes clear that a court should not disallow a claim for untimeliness if the Proof of Claim has been “tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of [the Code] or under the Federal Rules of Bankruptcy Procedure.” 11 U.S.C. § 502(b)(9).

Meanwhile, section 726(a)(2) of the Bankruptcy Code expressly authorizes payment of “tardily filed” unsecured claims “if (i) the creditor that holds such a claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and (ii) proof of such claim is filed in time to permit payment of such claim.” 11 U.S.C. § 726(a)(2)(C). In fact, even absent the creditor’s actual knowledge or notice of the bankruptcy case, section 726(a)(3) permits payment of tardily filed claims, albeit at a lesser priority for payment than claims that are permitted pursuant to section 726(a)(2)(C). See 11 U.S.C. § 726(a)(3).

Here, the Bankruptcy Court determined that even though Duda listed ManorCare on the list of unsecured creditors that was filed with her Chapter 7 Petition, the Trustee did not properly serve ManorCare with the Notice of Deadline to File Proof of Claim. (11/14/06 Hr’g Tr. at 10-11.) As the court explained, the Certificate of Service to the Notice documented the Notice as being served to ManorCare’s address at 2125 Elizabeth Avenue in Laureldale, but addressed to Michael Duda rather than ManorCare. (Id.) The court therefore concluded as follows:

I accept the position of [ManorCare] that they did not receive timely notice of the – because I’m looking at the Court’s record, the trustee’s record, the Court’s record of service through the Court sponsored and Court hired service company, BNC – which Bankruptcy Notice Company or Corporation or something like that – and the only thing that goes to that address goes to – shows it as going to Michael Duda. And if that were addressed that way, presumably Manor Care wouldn’t have opened it, but in fact would have delivered it to Mr. Duda.

(Id. at 12.) On that basis, the court rejected Duda’s timeliness objection. (Id. at 13.)

In her present appeal, Duda does not dispute the Bankruptcy Court’s finding that ManorCare did not receive timely notice of the Notice of Time to File Proof of Claim (the “Notice”). Rather, she merely reiterates her earlier argument that ManorCare’s Proof of Claim was filed “well beyond”

the August 10, 2006 deadline and should therefore be dismissed. (Appellant’s Br. at 4-5). In support of this contention, Duda cites to a single case, In re Piggott, 684 F.2d 239, 241 (3d Cir. 1982) (finding that bankruptcy court had erred in permitting two creditors to file untimely proofs of claim.) Piggott, however, relied on a section of the Bankruptcy Code – namely, section 57(n) – that was repealed in 1978, when the Bankruptcy Reform Act of 1978 was passed.¹ See In re Vertientes, Ltd., 845 F.2d at 59 (concluding that Piggott “no longer reflects the proper standard of review for this type of order”). Accordingly, Piggott does not support Duda’s argument that ManorCare’s Proof of Claim should be dismissed on timeliness grounds.

Furthermore, it is plain from the undisputed record and applicable law that the Bankruptcy Court simply did not err in overruling Duda’s timeliness objection. As the Certificate of Service to the Notice makes clear, the Trustee did not serve ManorCare with the Notice. (See Certif. of Svc. to Notice.) Moreover, ManorCare’s attorney represented at the hearing that he did not learn of the bankruptcy filing until August 7, 2006, when Duda’s counsel sent him a letter advising him that the bankruptcy had been filed and asking him to withdraw his civil action against Duda. (11/14/06 Hr’g Tr. at 8). Under these circumstances, ManorCare’s claim may be allowed under either section 726(a)(2)(c) or section 726(a)(3) of the Bankruptcy Code. See 11 U.S.C. §§ 726(a)(2)(C), (a)(3). We therefore affirm the Bankruptcy Court’s order insofar as it overruled Duda’s timeliness objection to ManorCare’s Proof of Claim.

B. Duda’s Personal Liability

Duda next argues that the Bankruptcy Court erred in finding her to be personally liable for

¹Under former section 57(n) of the Bankruptcy Act, “the bankruptcy court had no discretion to allow untimely claims.” In Re Vertientes, Ltd., 845 F.2d 57, 59 (3d Cir. 1988).

her father's debt to ManorCare, when she was not in privity of contract with ManorCare and, therefore, had no financial obligation to the facility. This claim also fails.

As stated above, upon admission of her father to ManorCare, Duda signed an Admission Agreement in her capacity as her father's "Legal Representative." As the Legal Representative, Duda agreed to use her father's income and assets to pay ManorCare's fees and expenses. (See Admission Agrmt. ¶ 2.02.) Moreover, pursuant to the Agreement, Duda agreed to accept personal liability for her father's debts to ManorCare if she breached her duty to use her father's income and assets to pay ManorCare's fees and charges. (Id.)

Duda argues in her appeal that she was not bound by the provisions of Paragraph 2.02 because she did not sign the Agreement on her own behalf, but rather, only signed on behalf of her father. (See Id. at 9.) The Admission Agreement does, in fact, have three signature lines, one for the Resident (here, Duda's father), one for a Legal Representative, "signing on behalf of Resident," and one for a Legal Representative, "signing on his/her own behalf," and Duda signed only the second of those lines, i.e., the one "on behalf of" the Resident. (Id.) However, as the Bankruptcy Court noted, there is no distinction in Paragraph 2.02 between the two varieties of Legal Representative. (See 11/14/06 Hr'g Tr. at 78.) Rather, the paragraph refers simply to "Legal Representative" without qualification. (See Admission Agrmt. ¶ 2.02.) Consequently, while Duda argues that "the legal effect of her signature is to bind the resident, not herself in any way, to any terms of the agreement" (Appellant's Br. at 5), the unambiguous terms of the contract dictate otherwise.² Indeed, when she signed the contract in her capacity as her father's "Legal

²Duda does not argue on appeal that she is not personally liable under the Admission Agreement because the precondition to personal liability under Paragraph 2.02 did not occur, i.e., she did not fail to pay ManorCare out of her father's income and resources. Accordingly, we do not

Representative,” she became a party to the contract and assumed responsibility for the contractual obligations of a Legal Representative. Thus, the Bankruptcy Court did not err in rejecting her argument that she was not in privity of contract with ManorCare and overruling her objection to ManorCare’s Proof of Claim on that basis.³

IV. CONCLUSION

For the foregoing reasons, we affirm the Order of the Bankruptcy Court. An appropriate Order follows.

review that aspect of the Bankruptcy Court’s decision.

³In one section of her appellate brief, Duda frames her argument as one concerning the burden of proof and asserts that ManorCare did not meet its burden of proving by a preponderance of the evidence that she was bound by the terms of Paragraph 2.02 of the Agreement. (See Appellant’s Br. at 6.) However, as the foregoing discussion demonstrates, ManorCare’s burden in this regard was satisfied by the Admission Agreement itself, which definitively establishes Duda’s obligations under it.

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ORDER

AND NOW, this 15th day of May 2007, upon consideration of the Bankruptcy Court's Order dated November 14, 2006, Appellant's Brief (Docket Entry #7), and Appellee's Response thereto (Docket Entry #8), **IT IS HEREBY ORDERED** that the Order of the Bankruptcy Court dated November 30, 2006 is **AFFIRMED**.

BY THE COURT:

/s/ John R. Padova, J.
John R. Padova, J.